

IN RE: SUPREME COURT RULE 1-2, RULE 2-4 and
RULE 4-2(a), RULE 2 OF THE RULES OF APPELLATE
PROCEDURE--CRIMINAL, and RULE 3 OF THE RULES
OF APPELLATE PROCEDURE--CIVIL

___ S.W.2d ___

Supreme Court of Arkansas
Opinion delivered June 30, 1997

Per Curiam.

By per curiam order dated July 15, 1996, Supreme Court Rule 1-2 was revised to begin the process of adjusting the jurisdiction between the Supreme Court and the Court of Appeals in light of the expansion of the Court of Appeals to twelve members. At that time we said:

It is generally recognized that a state's supreme court, in our case sitting en banc as a court of seven, should hear those cases presenting the opportunity to develop or expound substantial legal principles. A court of appeals, usually sitting in panels of three, should decide cases applying existing legal principles. ...

Our objectives are a fair allocation of the cases between the two courts, the expeditious disposition of appeals, and better insuring that the Supreme Court decides those cases of significant public interest and major legal importance, such as appeals involving issues of first impression, appeals seeking to overrule precedents, and appeals presenting opportunities to resolve conflicting precedents.

The changes we then implemented have been in place for approximately ten months. During this same period, the Court of Appeals has done yeoman's work in reducing its backlog, and the twelve judges are now in place.

Thus, it is now time for the next step in the process, that is, a reallocation of the cases between the two courts based on the objectives outlined above while still striving for a fair workload allocation.

Effective for cases in which the record is lodged in the Supreme Court or Court of Appeals on or after September 1, 1997, we hereby amend Supreme Court Rules 1-2, 2-4, and 4-2(a), Rule 2 of the Rules of Appellate Procedure--Criminal, and Rule 3 of the Rules of Appellate Procedure--Civil as set out below.

RULE 1-2. APPELLATE JURISDICTION OF THE SUPREME COURT AND COURT OF APPEALS.

(a) SUPREME COURT JURISDICTION. All cases appealed shall be filed in the Court of Appeals except that the following cases shall be filed in the Supreme Court:

1. All appeals involving the interpretation or construction of the Constitution of Arkansas;

2. Criminal appeals in which the death penalty or life imprisonment has been imposed;

3. Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit, chancery, or probate courts;

4. Appeals pertaining to elections and election procedures;

5. Appeals involving the discipline of attorneys-at-law and or arising under the power of the Supreme Court to regulate the practice of law;

6. Appeals involving the discipline and disability of judges;

7. Second or subsequent appeals following an appeal which has been decided in the Supreme Court; and

8. Appeals required by law to be heard by the Supreme Court.

(b) REASSIGNMENT OF CASES. Any case is subject to reassignment by the Supreme Court, and in doing so, the Supreme Court will consider but not be limited to the following:

- (1) issues of first impression,
- (2) issues upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- (3) issues involving federal constitutional interpretation,
- (4) issues of substantial public interest,
- (5) significant issues needing clarification or development of the law, or overruling of precedent, and
- (6) appeals involving substantial questions of law concerning the validity, construction, or interpretation of an act of the General Assembly, ordinance of a municipality or county, or a rule or regulation of any court, administrative agency, or regulatory body.

(c) INFORMATIONAL STATEMENT AND JURISDICTIONAL STATEMENT.

(1) The Informational Statement and Jurisdictional Statement in appellant's brief are for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit.

(A) The Informational Statement which is to be contained within the brief, as provided in Rule 4-2 (a) (2), shall be on a form which may be copied from that provided below and which shall be available from the Clerk.

(B) The Jurisdictional Statement, in narrative form, shall be completed on separate page(s), not to exceed three 8 1/2" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The attorney's signature may appear on a separate page at the end and shall not count against the three-page limit. The style of the case should not be stated, and, beginning with the first page, the Jurisdictional Statement shall contain in the order indicated:

(i) The first numbered paragraph which shall concisely state all issues of law raised on appeal. The issues should be expressed in the terms and circumstances of the case but without unnecessary detail.

(ii) The second numbered paragraph which shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes:" Then, the appellant shall discuss as many of the issues listed in Rule 1-2 (b) which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

(2) If a cross-appeal is filed, the cross-appellant shall include in his or her brief an Informational Statement and Jurisdictional Statement in the same format as that for the appellant limited to the issues raised by the cross-appeal.

(3) If there is substantial disagreement on the part of an appellee or cross-appellee with the information in the appellant's Jurisdictional Statement, the appellee or cross-appellee may include in the appellee's or cross-appellee's brief a statement entitled "Appellee's Response to Jurisdictional Statement", in which the appellee or cross-appellee may dispute or clarify any of

the appellant's statements, concluding with the following certification. "I express a belief, based on a reasoned and studied professional judgment, that the statements made by the appellant in the appellant's Jurisdictional Statement to which I have taken exception are material to understanding correctly the nature of this appeal and its disposition in the appropriate appellate court." The page requirements for the appellee's response shall comply with the provisions of subsection (c) except that it shall not exceed two pages. The appellee's response shall not include an Informational Statement.

(d) TRANSFER AND CERTIFICATION. The Supreme Court may transfer to the Court of Appeals any case appealed to the Supreme Court and may transfer to the Supreme Court any case appealed to the Court of Appeals. If the Court of Appeals seeks to transfer a case, the Court of Appeals shall find and certify that the case: (1) is excepted from its jurisdiction by Rule 1-2 (a), or (2) otherwise involves an issue of significant public interest or a legal principle of major importance. The Supreme Court may accept for its docket cases so certified or may remand any of them to the Court of Appeals for decision. The Clerk of the Court shall notify the parties or their counsel of the transfer of any case.

(e) PETITION FOR REVIEW. No appeal as of right shall lie from the Court of Appeals to the Supreme Court. The Supreme Court will exercise its discretion to review an appeal decided by the Court of Appeals only on application by a party to the appeal, upon certification of the Court of Appeals, or if the Supreme Court decides the case is one that should have originally been assigned to the Supreme Court. In determining whether to grant a petition to review, the following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons that will be considered: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is arguably in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals arguably erred in some way related to one of the grounds listed in Rule 1-2 (b).

(f) IMPROPER FILING. No case filed in either the Supreme Court or the Court of Appeals shall be dismissed for having been filed in the wrong court but shall be transferred or certified to the proper court.

(g) ALLOCATION OF WORKLOAD. Notwithstanding the foregoing provisions, cases may be assigned and transferred between the courts by Supreme Court order to achieve a fair allocation of the appellate workload between the Supreme Court and the Court of Appeals.

RULE 2-4. PETITIONS FOR REVIEW.

(a) CONTENTS OF PETITION. A petition to the Supreme Court for review of a decision of the Court of Appeals must be in writing and must be filed within 18 days from the date of the decision, regardless of whether a petition for rehearing is filed with the Court of Appeals. The petition may be typewritten and shall not exceed three 8 1/2" x 11", double-spaced pages in length. The petition must briefly and distinctly state the basis upon which the case should be reviewed and may include citations of authority or references to statutes or constitutional provisions. The petition can only be filed by a party to the appeal and is otherwise subject to Rule 1-2 (e).

(b) BRIEFS AND ORAL ARGUMENT PROHIBITED. Briefs will not be accepted and oral arguments will not be heard in support of

petitions for review. However, the petitioner may attach a copy of the petition for rehearing to the petition for review.

(c) GROUNDS FOR REVIEW. A petition for review must allege one of the following: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals otherwise erred with respect to one of the grounds listed in Rule 1-2 (b).

(d) RESPONSE. A response to a petition for review must be filed within 10 calendar days of the date the petition was filed. Responses are subject to the same limitations as petitions. The respondent may attach a copy of the response to the petition for rehearing to the response to the petition for review.

(e) CLERK'S NOTIFICATION; REQUEST FOR ORAL ARGUMENT. When the Supreme Court grants a petition for review, the Clerk shall promptly notify all counsel and parties appearing pro se. Within two weeks of the notification, fourteen additional copies of the briefs previously submitted to the Court of Appeals shall be filed with the Clerk. Any party may request oral argument by filing, contemporaneously with that party's filing of the additional copies of the briefs, a letter, separate from the brief, stating the request with a copy to all parties. The decision to grant the request for oral argument and other aspects of oral argument are governed by Rule 5-1.

(f) SUPPLEMENTAL AND REPLY BRIEFS. Any party may request permission to submit a supplemental brief by motion, filed with the Clerk and served upon all other parties, within two weeks after the granting of review. The moving party's brief shall be due twenty days from the granting of the motion. Other parties may file responsive supplemental briefs within ten days of the date the moving party's supplemental brief is filed. A reply brief may be filed within five days after the filing of a responsive supplemental brief. No supplemental brief, responsive supplemental brief, or reply brief submitted pursuant to this Rule shall exceed ten pages in length. These briefs shall otherwise conform to the requirements of Rule 4-1.

RULE 4-2. CONTENTS OF BRIEFS.

(a) CONTENTS. The contents of the brief shall be in the following order:

(1) TABLE OF CONTENTS. Each brief must include a table of contents. It should reference the page number for the beginning of each of the major sections identified in Rule 4-2(a) (2)-(7). Within the abstract section of the brief, it should reference the page number for the beginning of each witness' testimony and should note the page at which each pleading and document is abstracted.

(2) INFORMATIONAL STATEMENT AND JURISDICTIONAL STATEMENT. The Informational Statement and Jurisdictional Statement required by Supreme Court Rule 1-2 (c).

(3) STATEMENT OF THE CASE. The appellant's brief shall contain a concise statement of the case, without argument. This statement, ordinarily not exceeding two pages in length, shall not exceed five pages without leave of the Court. The statement of the case should be sufficient to enable the court to read the abstract with an understanding of the nature of the case, the general fact situation, and the action taken by the trial court. The appellee's brief need not contain a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

(4) POINTS ON APPEAL. Following the appellant's statement of the

case, the appellant shall list and separately number, concisely and without argument, the points relied upon for a reversal of the judgment or decree. The appellee will follow the same sequence and arrangement of points as contained in the appellant's brief and may then state additional points. Either party may insert under any point not more than two citations which either considers to be the principal authorities on that point.

(5) TABLE OF AUTHORITIES. The table of authorities shall be an alphabetical listing of authorities with a designation of the page number of the brief on which the authority appears. The authorities shall be grouped as follows:

- (A) Cases
- (B) Statutes/rules
- (C) Books and treatises
- (D) Miscellaneous

(6) ABSTRACT. The appellant's abstract or abridgment of the record should consist of an impartial condensation, without comment or emphasis, of only such material parts of the pleadings, proceedings, facts, documents, and other matters in the record as are necessary to an understanding of all questions presented to the Court for decision. A document, such as a will or contract, may be photocopied and attached as an exhibit to the abstract. However, the document or the necessary portions of the document must be abstracted. Mere notation such as "plaintiff's exhibit no. 4" is not sufficient. On a second or subsequent appeal, the abstract shall include a condensation of all pertinent portions of the record filed on any prior appeal. Not more than two pages of the record shall in any instance be abstracted without a page reference to the record. In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used. The Clerk will refuse to accept a brief if the testimony is not abstracted in the first person or if the abstract does not contain the required references to the record. In the abstracting of depositions taken on interrogatories, requests for admissions, and the responses thereto, and interrogatories to parties and the responses thereto, the abstract of each answer must immediately follow the abstract of the question. Whenever a map, plat, photograph, or other similar exhibit, which cannot be abstracted in words, must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by photography or other process and attach it to the copies of the abstract filed in the Court and served upon the opposing counsel, unless this requirement is shown to be impracticable and is waived by the Court upon motion.

(7) ARGUMENT. Arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. Citations of decisions of the Court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible. The number of pages for argument shall comply with Rule 4-1(b).

(8) COVER FOR BRIEFS. On the cover of every brief there should appear the number and style of the case in the Supreme Court or Court of Appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (e.g., "Abstract and Brief for Appellant"), and the name or names of individual counsel who prepared the brief, including their addresses and telephone numbers.

Rule 3 of the Rules of Appellate Procedure--Civil at the end of subsection (e), Content of Notice of Appeal or Cross-Appeal, and Rule 2 of the Rules of Appellate Procedure--Criminal at the end of subsection (a), Notice of Appeal, are amended and shall appear as follows:

"The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2(a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate."

INFORMATIONAL STATEMENT

I. ANY RELATED OR PRIOR APPEAL (Identify)

II. BASIS OF SUPREME COURT JURISDICTION (see Rule 1-2 (a))

(☐) Check here if no basis for Supreme Court Jurisdiction is being asserted, or check below all applicable grounds on which Supreme Court Jurisdiction is asserted.

(1) ☐ Construction of Constitution of Arkansas

(2) ☐ Death penalty, life imprisonment

(3) ☐ Extraordinary writs

(4) ☐ Elections and election procedures

(5) ☐ Discipline of attorneys

(6) ☐ Discipline and disability of judges

(7) ☐ Previous appeal in Supreme Court

(8) ☐ Appeal to Supreme Court by law

III. NATURE OF APPEAL

(1) ☐ Administrative or regulatory action

(2) ☐ Rule 37

(3) ☐ Rule on Clerk

(4) ☐ Interlocutory appeal

(5) ☐ Usury

(6) ☐ Products liability

(7) ☐ Oil, gas, or mineral rights

(8) ☐ Torts

(9) ☐ Construction of deed or will

(10) ☐ Contract

(11) ☐ Criminal

(i)

[Write a brief statement limited to the space provided describing the case on appeal, and set out the causes of action (i.e., in a civil case, tort, contract, etc., or in a criminal case, the convicted offenses, whether felony or misdemeanor, and the punishment) underlying the judgment from which the appeal is taken.]

IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT?

V. EXTRAORDINARY ISSUES. (Check if applicable, and discuss in PARAGRAPH 2 of the Jurisdictional Statement.)

- ☐ appeal presents issue of first impression,
- ☐ appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- ☐ appeal involves federal constitutional interpretation,
- ☐ appeal is of substantial public interest,
- ☐ appeal involves significant issue needing clarification or development of the law, or overruling of precedent.
- ☐ appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

(ii)

INSTRUCTIONS FOR JURISDICTIONAL STATEMENT

Counsel should keep in mind the Jurisdictional Statement is to be used for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit.

The Jurisdictional Statement pursuant to Rule 1-2 (c) shall be completed on separate page(s), not to exceed three pages, and is subject to the provisions of Rule 1-2 (c). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The style of the case should not be stated, and, beginning with the first page, it shall contain in the order indicated:

1. The first numbered paragraph shall concisely state all issues of law raised on appeal. They should be expressed in the

terms and circumstances of the case but without unnecessary detail.

2. The second numbered paragraph shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes:" Then, the appellant shall explain each of the issues checked on PART V of the Informational Statement which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

(iii)